

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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WILLIAM SIM SPENCER,

Petitioner,

v.

JASON CASON,

Respondent.

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Case No. 1:04-CV-566

Hon. Richard Alan Enslen

**JUDGMENT**

This matter is before the Court to assess Petitioner William Sim Spencer's Verified Objection to the April 9, 2007 Report and Recommendation of United States Magistrate Judge Ellen S. Carmody. Magistrate Judge Carmody has recommended that this Petition for Writ of Habeas Corpus be denied on the merits. This Court now reviews the Report, the Objection and the pertinent parts of the record *de novo*. See 28 U.S.C. § 636(b)(1)(B).

Upon reviewing this matter, which challenges Petitioner's concurrent terms of 8-15 years imposed on February 1, 2002 (*see* Sentencing Tr. 8.), the Court has discovered that the Michigan Supreme Court has recently granted Petitioner relief under state law (the application of the state sentencing guidelines) and has remanded the state court matter to the Oakland Circuit Court for re-sentencing. *People v. Spencer*, 729 N.W.2d 225, 225 (Mich. April 11, 2007.) This remand has effectively vacated the factual basis upon which Petitioner has moved for relief and has made any future challenges to sentencing dependent upon the process and determinations made at the re-sentencing hearing. Accordingly, this Petition must be dismissed without prejudice as premature to await the further process and conclusions of the Michigan courts. See *Brown v. United States*, 992

F.2d 1216 (6th Cir. 1993) (unpublished decision) (dismissing habeas petition filed while petitioner was awaiting sentencing); *United States v. Davis*, 604 F.2d 474, 484 (7th Cir. 1979) (dismissing as premature section 2255 motion filed during pendency of appeal). This dismissal will not prevent Petitioner from filing a further petition for writ of habeas corpus upon the conclusion of the state court matters, if necessary. *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 644-45 (1998) (holding that habeas petition raising claim previously dismissed as premature was not second or successive); *Lang v. United States*, 474 F.3d 348, 351 (6th Cir. 2007) (following *Stewart*).

**THEREFORE, IT IS HEREBY ORDERED** that the Report and Recommendation of April 9, 2007 (Dkt. No. 64) is **REJECTED**, the Verified Objection (Dkt. No. 65) is **DENIED** as moot, and this Petition for Writ of Habeas Corpus is **DENIED WITHOUT PREJUDICE** as premature.

**IT IS FURTHER ORDERED** that, to the extent Petitioner seeks the issuance of a certificate of appealability during the pendency of the state court action, such relief is **DENIED WITHOUT PREJUDICE** as to all grounds asserted because review would be premature.

DATED in Kalamazoo, MI:  
May 4, 2007

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE